

Craft Beer Trademarks: The Ol' Cease & Desist

May 2019

Local Alberta breweries **Elite Brewing** (visited, love the carbon fibre bar) and **Bow River Brewing** have been on the receiving end of a [cease and desist letter](#) from the City of Calgary over a beer label for **Fort Calgary ISA** (a “richly hopped lighter bodied India session ale”).

The complaint by the City related to the unauthorized use of “FORT CALGARY”, which is an official mark owned by the City.

But wait, isn’t “FORT CALGARY” also an historical landmark and a place name?

From reading our other articles on [geographical locations as trademarks](#), you might wonder how this works. You might say “Hang on... if a trademark is based on a geographic name, and a trademarks examiner decides that the geographic name is the same as the actual place of origin of the products, won’t the trademark be considered ‘clearly descriptive’ and thus unregistrable as a trademark? Furthermore, if the geographic name is NOT the same as the actual place of origin of the goods and services, the trademark will be considered ‘deceptively misdescriptive’ since the ordinary consumer would be misled into the belief that the products originated from the location of that geographic name. If that’s true, then how can a trademark owner assert rights over a geographic location?”

Yes, yes, that’s all true, with some exceptions, but according to Canadian trademark law there is also something called an official mark, which is what the City of Calgary owns. This is a rare species of super-mark that effectively sidesteps all of those petty concerns regarding geographical locations, ‘clearly descriptive’ and ‘deceptively misdescriptive’.

By virtue of its status as a government entity, the City can assert rights in certain marks that it adopts under Section 9 of the *Trademarks Act*. These rights form the legal basis for the City’s recent cease and desist letter regarding the FORT CALGARY beer label.

This case has some unique elements due to the special rights that the City claims under the *Trademarks Act*, but the general message is the same: craft brewers can benefit from some preliminary trademark clearance searching when they launch a brand or a new beer name. And they should seek advice if they’re on the receiving end of this kind of letter.

In the end, the brewers reportedly agreed to sell out their remaining stock and refrain from further use of the Fort Calgary label, and the City agreed not to commence a lawsuit.

Industries

Craft Brewing + Distilleries

People

Richard Stobbe Partner,
Trademark Agent, CLP
rstobbe@fieldlaw.com